THE PROBABLE OR THE NATURAL CONSEQUENCE AS THE TEST OF LIABILITY IN NEGLIGENCE.

[*Concluded.*]

The cases on this subject in Pennsylvania fall into two distinct classes: (1) Where the question to be determined is whether negligence toward the plaintiff has been established by evidence showing (*a*) a duty of care owed the plaintiff, (*b*) an absence of that degree of care which the circumstances require the defendant to exercise; (2) where the question is as to whether a certain injury sustained is to be ascribed to the admitted wrong as that legal consequence for which they are bound to compensate the sufferer. It would be neither possible nor advantageous to attempt to classify more than a few of the leading cases under each head; but if it be found that the test in *Hoag* v. *R. R.* is applied without qualification only in the first, while in the second it is so modified as to practically amount to a rule requiring an admitted wrongdoer to make compensation for all the natural results of his acts, the subject will be cleared of much that confuses it, the Pennsylvania courts will be brought in substantial accord with the prevailing law on the point, and many cases usually cited in one class of cases will be found to be of authority only in the other. In cases of the first class, the rule in *Hoag* v. *R. R.* is applied without qualification.

McGrew v. *Stone*[19] and *Scott* v. *Hunter*[20] are two closely allied cases. In the first a bargeman moored his boat to a pier of a bridge in the centre of a rapid current; from some cause impossible to state the barge broke loose, sank, and drifted underneath the plaintiff's boat, moored below in a crowded basin, and injured it. There was no proof of lack of care in the mooring, the only alleged negligent act proved was the mooring in an exposed place. The sole question presented was whether, in view of the exposed position of

[19] 53 Pa. 436
[20] 46 Pa. 192.

the bridge, the rapidity of the current, and the position of the barges, he should not have foreseen that to moor his boat as he did might probably endanger the boats below; if so, to moor it there was negligent.

In *Scott* v. *Hunter*, the defendant blocked with his boats passage through a lock, while the river was rapidly rising. The increasing current swept over the dam the plaintiff's boat, exposed to it by the delay. Here again the question was whether the defendant's acts had any tendency to expose the plaintiff's property to any peril. True, it was unlawful in that it impeded him in the exercise of the right of passage through a public water highway; but it was not negligence unless it could be foreseen as threatening injury to the plaintiff's boat, and this turned upon the fact of his knowledge of the approach of the flood; since he knew of it, the increased danger demanded added care. Had it occurred without warning it would have been an outside agent destroying the chain of cause and effect, diverting the result of the obstruction of the canal from its natural effect, a delay, to an extraordinary one, destruction of the boats. In *Morrison* v. *Davis*,[21] a flood, which destroyed baggage brought within its radius of action by a delay caused by negligence, broke the chain of events between the negligence and the loss, there being nothing to indicate at the time of the negligent act the probability of any such flood.[22] Thus it is seen that an extraordinary natural force will be, if its existence is known when the act is done, not an act of God intervening between the wrong and its result, but merely one of the circumstances of the case in the light of which the extent of the defendant's duty, and the amount of care required, is to be determined. The new probabilities of danger created by it throw upon him wider duties, require from him new precautions, just as in contract exceptional circumstances known to both parties render

[21] 20 Pa. 171.

[22] The result "was natural if it could have been foreseen, or if it would have been guarded against by men of ordinary prudence using these rights with due regard to those of others." Strong, J., as quoted in 70 Pa., p. 90. Clearly the probability of danger as creating the duty to take care to avoid it is here meant.

them liable for all damages from a breach of the contract which the circumstances render probable; in the one case knowledge increases the duty, in the other the scope of recovery.

The converse of this was decided in *McCauley* v. *Logan*.[23] Boats were lashed to a bank with lashings sufficient in ordinary water, but were swept away by an extraordinary flood which the lashings were insufficient to resist. The defendant had no reason to expect such a flood; he was therefore not bound to provide against it. "Legal duty does not require precautions against unusual and extraordinary events:" Green, J., p. 217.

In *Fairbanks* v. *Kerr*,[24] the plaintiffs had piled flagstones in the street; the defendant got upon them to make a political speech; some stones were broken by the weight of the crowd who assembled to hear him speak. It was *held*, reversing the court below, that it was a question for the jury whether he should have foreseen that his speech would cause crowds to assemble upon these stones in such numbers as to threaten injury to them. Here again the question is, Was there any such probability of danger to the plaintiff from the defendant's acts that he was under a duty to them to refrain from doing what he did? It is to be noted here that he might have been indicted for a nuisance in obstructing the street. Even though an act be wrongful as a misdemeanor against the Commonwealth, or as threatening injury to a third party, it is not negligent as to the plaintiff unless it could and should have been foreseen as likely to injure the plaintiff himself. He cannot, by tacking on to his injury a wrong to the public, or the failure to observe a measure of care due to another, acquire a right of action.

The defendant is not to be punished for his wrongful act, unless it results in injury to one having the right to demand that he refrain from it; nor can the plaintiff recover for an injury except from him who was bound to protect him from it.

In *Hoag* v. *R. R.*,[25] where the so-called Pennsylvania rule

[23] 152 Pa. 202.
[24] 70 Pa. 86.
[25] 85 Pa. 293.

was announced by Paxson, J., the facts again presented a question as to the existence of negligence *qua* the plaintiff, and so the rule was undoubtedly the correct test as applied to the case in hand. There was a derailment caused by undoubtedly careless management, some hundreds of feet from the plaintiff's property. Oil tanks were broken, the oil ignited, carried down an unusually swollen stream, and so reached and ignited the plaintiff's premises. Now, here the defendants were not as to the plaintiff bound to conduct their business at this place in any particular way, unless they should foresee that a failure to properly conduct it there would probably put the plaintiff's property in jeopardy. There must be probability of injury to raise the duty of care, the foresight of the normal man then became the proper test.

The plaintiff could not take an act of carelessness, no doubt a violation of a duty owed to some one, and so negligent as to him, and sue for injuries he had received as a natural consequence thereof; he failed because he could not convince the court that some injury to him should have been foreseen as probable, and that therefore the defendant had owed him a duty of care, and were negligent in violating it.

In *Wood* v. *Pa. R. R.*,[26] the court applied the rule in *Hoag* v. *R. R.*, without qualification, to most curious facts. A passenger was standing on the platform of a station, apparently at a safe distance from the track. A train was approaching at a high rate of speed, without blowing a whistle, or ringing a bell, and struck a woman who was trying to cross the rails, and hurled her body against and injured the plaintiff. It was *held* that, assuming that the woman had been struck solely by reason of the negligent mode in which the train was run, the plaintiff's injury was not legally the consequence of the act of negligence. At first glance this seems to go far towards upholding the restriction of liability for an admitted wrong, to the result reasonably to be anticipated by the wrongdoer; but a closer inspection shows that while there was negligence, an injury resulting, and no independent cause intervening, the negligence was the failure to take those precautions owed as a duty, not to the plaintiff,

[26] 177 Pa. 306.

but to the woman struck by the train. The real point involved was whether the railroad company owed the plaintiff, as passenger upon the platform, any duty to warn the plaintiff of the approach of the train. The company, while not guaranteeing their safety, undoubtedly owed some duty to passengers waiting for trains upon its platform. What is it? To protect them by the exercise of care in the management of any part of its business, a careless management of which might reasonably be expected to imperil the passenger, to take such precautions as are reasonably sufficient to protect the passenger from any danger which he or she may probably be subjected to by his position as such. The decision then comes to this, that since the company could not have anticipated any probability that the plaintiff's safety could be affected by the absence of warning of the approach of the train, it was under no duty to her to give any such warning. While it owed a duty to take care, such acts fall outside the standard of care required.[27]

The test in *Hoag* v. *R. R.* was properly applied, the question being the existence of negligence as between plaintiff and defendant. In the case of *Sturgis* v. *Kountz*,[28] where the question was, whether a ferry company should foresee the probability of a horse becoming frightened while in course of transport. If so, they will be bound to provide guard-rail sufficient to prevent frightened horses going overboard. And in *Scott* v. *R. R.*,[29] the question being whether the standard of care imposed upon a carrier for the protection of goods from fire required them, in addition to maintaining a corps of watchmen, to close each car-door tight, to avoid the danger of a fire, so violent, sudden and near that the sparks entered the small opening left unclosed before the

[27] This is analogous to the case of Brooks *v.* R. R., 168 Mass. 164, where a passenger on the platform was injured by a runaway horse which came upon the platform because of some insufficiency in the safety gates. The court *held* the company were under no duty to the passengers to maintain safety gates to protect them from such improbable occurrences. Their duty as to safety gates was to persons seeking to cross the lines, not to passengers in their stations, who could not be reasonably expected to be affected by their condition.

[28] 165 Pa. 364.

[29] 172 Pa. 646.

watchmen could move the cars. It was *held* to be so improbable that no one could be called upon to take measures to avoid it; *contra,* if a car-door had been left open while in transit, when sparks are to be expected as a necessary incident to the running of trains. And in the ordinary cases in which the liability of municipalities for the condition of their streets and roads is discussed, notwithstanding Heydrick's (J.) opinion in *Shaeffer* v. *Township,*[30] which announces a doctrine much larger than the facts of the case demanded—adopted from New England—where the right of action is statutory, and so only direct damages can be recovered. In effect, he says the defect must be the sole cause of the accident; this, while supportable in Massachusetts, because of the special nature of the duty and the right of action, is quite at variance with the law of negligence in Pennsylvania, where the duty to maintain roads exists at common law, and where townships and other municipal corporations, possessing a general corporate fund, are liable to actions for failure to perform either statutory or common law duties.

As a rule these cases turn upon the question, whether the accident was such an ordinary incident of travel as should have been foreseen and provided for by making and maintaining a road in such condition as to render all ordinary travel safe: *Hey* v. *Philada.,*[31] *Township* v. *Merkhoffer,*[32] *Tsp.* v. *Davis,*[33] *Township* v. *Wagner,*[34] and *Davis* v. *Snyder,*[35] in which it was said: "The measure of danger is the measure of duty." Increase of travel was *held* to have necessitated increased care, and made the absence of a guard rail, where the road on one side adjoined a steep bank, negligence.

But there is no duty to anticipate extraordinary events, sudden outside frights, and to make so perfect a road that

[30] 150 Pa. 145.
[31] 81 Pa. 44.
[32] 71 Pa. 276.
[33] 97 Pa. 317.
[34] 127 Pa. 184.
[35] 196 Pa. 273.

such occurrences can work no harm: *Kiefer* v. *Borough*,[36] *Chartiers* v. *Phillips*,[37] *Heister* v. *Township*.[38]

Turning now to the second class of cases—those where the duty is undoubted—the measure of care determined, and the violation of it established, and where the only point presented is the extent to which the wrongdoer shall answer to party aggrieved for what has resulted from it. No case can be found where this test of *Hoag* v. *R. R.* has been applied, or if applied, has not been so modified or added to as to amount to a new and quite different rule.

The first and leading case is *Pittsburg* v. *Grier*[39]. The city, who owned the wharf and received payment for its use, allowed certain iron to lie upon the wharf in a position, where it would become dangerous at high water; the plaintiff's boat was anchored at the wharf when the tide was low. As the water rose its position became insecure. To avoid this certain peril it was backed into the stream and there anchored. While there, she was struck and injured by some floating body which her captain could not see or avoid. It was argued that since the destruction of the boat could not have been foreseen as likely to occur, by reason of the defect in the wharf, therefore the city should not be responsible for it. C. J. Black said: "It is not the law that men are responsible for their negligence only to the extent of the injuries which they knew would result from it; if it were, there could be no recovery save for malicious wrongs." While this is rather narrowly expressed, the contention being, not that it was necessary for the city to know of the destruction as certain, but that they should have foreseen it as likely to occur before they could be responsible for it. Still, substantially, the rule in *Hoag* v. *R. R.* was urged upon the court, and rejected.

In *Kerr* v. *R. R.*,[40] the court, Thompson, C. J., giving the opinion, held that the railroad company was not responsible for the burning of a house not directly ignited by the

[36] 151 Pa. 304.
[37] 122 Pa. 601.
[38] 189 Pa. 253.
[39] 22 Pa. 54.
[40] 62 Pa. 353.

sparks from its engine, but taking fire from another house so ignited. After first quoting a measure of damages perfectly correct in cases of contract[41] as apparently the measure of damages for negligence, he *holds* that the chain and sequence of events is broken each time that the fire spreads from one house to another; the burning of each house is caused by the fire communicated from the other, the original cause of the conflagration being only responsible for the burning of the first house ignited.

This is applying with a vengeance the rule of damages in contract—that a party is responsible for the direct results of his breach. If followed it would restrict liability to direct results alone.

The case was in substance reversed in *Hope* v. *R. R.*,[42] in which it is held to be a matter for the jury to determine whether the negligence is "by continuous operation so linked to each successive fact as that all may be said to be one continuous operating succession of events, in which the first becomes naturally linked to the last, and to be its cause, and then to be within the probable foresight of him whose negligence runs through the succession to the injury."

The jury are to ascertain whether they are related "to each other by a continuous sequence, or are broken off or separated by a new and independent cause."

The United States rule, as announced in *Kellogg* v. *R. R.*, by Strong, J., is practically the same, viz., that it is a question for the jury to determine: "Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury?"

Last in the line of cases in regard to liability for the spread of fire comes *Haverly* v. *R. R.*,[43] in which *Hope* v. *R. R.* is approved. *There* a fire was started in a dry stump upon the defendant's premises some twenty feet from that of the plaintiff; it smoldered for a day, and then was

[41] The rule is that given by Parsons on Contract as the measure of damage for breach of contract.

[42] 80 Pa. 373.

[43] 135 Pa. 50.

fanned by an ordinary breeze into flame, and spread to and burned the plaintiff's timber. Mitchell, J., *held* that the mere lapse of time did not break the cause of connection; the cessations were merely apparent, making no real break in the actual continuance of the fire; nor did the fact that both plaintiff and defendant thought that the fire had been put out break the chain of events. "The plaintiff did not expect any injury because he thought the fire had been put out, not because he did not see the danger of its spreading while it was burning; and this was the danger that the defendant was bound to contemplate as the natural and probable consequence of the original act, not the effect of the supposed extinguishment subsequently."

Here we see that the defendant is answerable for all the natural consequences of his wrong until the injurious tendencies of his act have exhausted themselves, or have been diverted by some outside cause.

The plaintiff's conduct is to be judged by the probable effect of what he knew, or should know, to exist. He would be guilty of no negligence in failing to protect himself against the dangers attendant upon a fire which appeared to be extinguished. The supposed extinguishment could not avail the defendant so long as the fire actually remained alive; his negligence was not in failing to put out the fire, but in negligently starting it. Also Mitchell, J., *held* that a wind, such as was ordinarily to be expected, fanning the smoldering flames into life, was not an intervening agent; it was but one of those natural and usual agencies through which the negligence was to operate to its final result.[44]

[44] Must then a man who has carelessly started a fire answer for all the damage that occurs till it exhaust itself, or be put out or diverted by some extraordinary force? His original duty sets a limit to his liability—his duty cannot extend beyond the probable effects of his act. This is the answer to *Thompson, C. J.,* fears of enormous liability for slight defaults in Kerr *v.* R. R. A railroad where it runs through a town owes a stringent duty of care in maintaining proper spark arrestors, but only to those whose property is so nearly contiguous that a normal man would foresee probable peril to it from an escape of sparks, but none to one living miles away; for even though in the court's opinion the fire may without any outside assistance spread to it, there existed in advance no probability of danger to a property so distant.

In *Hogsett* v. *Bunting*[45] the defendants owned a private railroad which on a curve was intersected at two points by the road on which plaintiff was a passenger. At the first point a collision took place, due to an undoubtedly negligent act, of running at a great speed without warning given, of defendants' engineer, who, having reversed the engine to prevent the collision, and finding it still imminent, shut off steam and jumped; the jar of collision derailed one car of the plaintiff's train, and at the same time opened the throttle of defendants' engine; the train proceeded until stopped on account of the derailed car, where the tracks again met; the defendants' engine, the steam being thus turned on, backed with increasing impetus around the curve, again collided with the train, and injured the plaintiff. The court *held,* as matter of law (so called), that the injuries received were the legally proximate consequences of the first wrongful act.

In arriving at this conclusion, Clark, J., who delivered the opinion, first stated practically the rule in *Hoag* v. *R. R.,* but he said: "The engineer would be held to have foreseen whatever consequences might ensue from his negligence without the intervention of some other independent agency, and both his employer and himself would be held for what might, in the nature of things, occur in consequence of that negligence, although in advance the actual result might have seemed improbable:" *Oil City Gas Co.* v. *Robinson.*[46] He then says: "The inquiry must always be whether there was any intermediate cause, disconnected from the primary fault, and self-operating, which produced the injury:" *Milwaukee, etc., R. W. Co.* v. *Kellogg.*[47] Applying this test he decides there is no such break in the chain. The first collision derailed the truck, and at the same instant opened the throttle and turned loose the destructive agency which inflicted the

Within these limits the company is responsible for all the results naturally following the escape of sparks. The distant landowner cannot recover because the company owed him no duty—had, as to him, been guilty of no negligence—not because the result was not legally proximate had he been so guilty.

[45] 139 Pa. 374.

[46] 99 Pa. 1.

[47] 94 U. S. 469.

injuries complained of. The negligence of the defendants' engineer was the natural, primary and proximate cause of the entire occurrence.

The rule in *Hoag* v. *R. R.*, as thus amended and qualified, no longer establishes the foresight of the normal man as the test of liability; if foresight at all be important it is that of an ideal being able to anticipate all those consequences possible in the ordinary unassisted course of nature, no matter how apparently improbable to the ordinary average intelligence; while announcing probability as the measure of liability it, in fact, enforces responsibility for all natural consequences.

If this opinion is meant to announce an interpretation of the rule applicable to the determination of the liability of a person for the consequences of all acts alleged to be negligent, as well as those established to be so (and there is nothing save the facts to indicate that it is restricted to the latter), it announces a range of duty, a standard of care, a degree of responsibility foreign to any system of modern law destructive alike of freedom of individual action and of legitimate business enterprise. It would require all men to adopt precautions to protect all those who could be affected by the natural results of their acts, to act so carefully that their conduct could not possibly work injury.

No man, be he ever so prudent, could know how great the responsibilities of his acts might be until all the natural results of them had been exhausted or diverted. If an act having no tendency probable to any ordinary mind should work harm, should result in injury to another without the co-operation of some new outside force, compensation must be made. Such a rule would divert the whole law from its legitimate object, of enforcing mankind to conduct their affairs with reasonable regard for the rights of others likely to be affected thereby, into a rule requiring every individual to act at its peril, and if he injure another, to answer for it, though at the time no injury was either intended or could have been foreseen. So great a change surely was never intended; the case must be read by the light of its facts—the controlling fact is that negligence was fully established; it was this which led the court to express itself

as it did. So read it amounts to a decision that once negligence is proven, the probable anticipations of the wrongdoer cannot limit his liability; the test of that is, whether the injury was caused by the orderly working out of the injurious tendencies of the act operating through known natural laws of cause and effect,[48] to its final result, until some outside agency not itself created by the wrong intervene to divert[49] the consequences to some new and different end.

Thus we find two different tests of legally proximate cause applied as the circumstances of the cases require, and yet, unfortunately, the principle governing their applications so vaguely outlined that opinions in cases of the one class are constantly cited as decisive authority where the facts clearly fall within the other, and this not merely by counsel in argument, but by the court in giving their decisions.

In *Oil City Gas Co.* v. *Robinson*,[50] the dual aspect of cause and effect, as the test of liability in negligent cases, is recognized in a clear and masterly opinion of Gordon, J., His opinion expressed precisely the same thoughts as that of Blackburn in *Smith* v. *R. R.* (*supra*). The defendant's liability for the results of his well-established negligence was to be measured by the standard of natural consequences, even though unforeseen; the plaintiff's conduct as being contributory negligence or not was to be judged by the standard of the precautions reasonably necessary to guard him against those dangers which he should have anticipated under the circumstances of which he had or should have had knowledge. There was no attempt to lay down new rules, no idea that there was announced any departure from the established law; both principles had the authority of established cases: the first that of *Grier* v. *Pittsburg, etc.*, the second of *Hoag* v. *R. R.*, and kindred cases.

The company's pipes, originally bad, were broken and made worse by the city constructing a sewer; notice was

[48] And this includes the known business of human beings to act in particular ways under particular circumstances.

[49] Not merely to hasten the attainment of its natural result. Elder *v.* Lykens Valley, 157 Pa. 493.

[50] 99 Pa. 1.

given, but no repairs made; the gas permeated into the sewer, some three or four feet distant, exploded, and injured the plaintiff, a city engineer, who entered to inspect it, knowing the leakage, carrying a candle, which caused the explosion. He first *held* the leak was the proximate cause of the gas being in the sewer; if it were not "where was the intervening (cause) by which the consequences of the accident are to be shifted from the defendant to some other person or thing?" The break in the pipe by the city was not such a cause, for the cause was still the leaking gas, which, after the break and notice given, had not been prevented by repairs to the pipe. He rejects the argument that the company was responsible no further than what appeared to its officers reasonable probability. "The company was responsible for what might, in the nature of things, occur from its neglect, and its responsibility was not limited by what its officers may have thought to be improbable or even impossible." But the plaintiff, he says, was also bound to the exercise of a reasonable care for his own safety. "We cannot apply one rule to the company and another to the defendant, or vary the rule concerning negligence, except in this: the defendant was bound for the consequences of his neglect, though those consequences were not, and *could not,* by any ordinary prudence, have been anticipated; whilst the plaintiff was bound only to a knowledge of the *probable* consequences of the facts of which he was cognizant, and to that ordinary prudence which the circumstances required." If it was probable that the gas escaping from the leak would find its way into the sewer in quantities sufficient to produce an explosion, he ought to have anticipated the result, and not have entered the sewer with a lighted lamp. If he did so under the conditions stated, he was guilty of such contributory negligence as ought to have prevented his recovery. Neither the statement of the extent of the defendant's liability, or the plaintiff's standard of care, involved any novel view of legal cause and effect not already contained in the decided cases. There was no attempt to announce any new doctrine, nor was the standard set for the plaintiff's conduct either

more or less severe, because his negligence was contributory.[51]

The case is novel only in this: that side by side are seen the two meanings of legal consequence—the natural, for which the wrongdoer must answer; the probable, against which every one must guard by appropriate precaution himself and his neighbor. Each in turn is applied as a proper test where the facts demand it, each rejected where the facts render it inappropriate, as being either too narrow to compensate one injured by an admitted wrong, or so strict as to unduly hamper one whose actions are sufficient to guard against all probable dangers. This juxtaposition is very rare in its nature; it could only occur where one proven negligent seeks to escape liability by showing some negligence of the plaintiff contributing to cause his injury. Such negligence may or may not break the causal chain; it always prevents recovery. Upon a classification of the cases it is thus found that:

1. The existence of negligence is to be judged by the probable results of the defendant's acts foreseeable by the normal man similarly situated. So in every instance in this class of cases the rule in *Hoag* v. *R. R.* is applied without any qualification or addition.

2. This once being admitted or established, the liability for injuries sustained is to be determined by the natural consequences, those resulting from the operation of the ordinary natural laws, animate and inanimate. So in this class of cases the rule in *Hoag* v. *R. R.* is either not mentioned, or is always so qualified, explained and amended as to make the test of liability no longer the foreseeable probability, but an unbroken natural sequence of event.

3. In *Oil City* v. *Robinson* both standards are recognized and applied to their appropriate facts.

Thus there is no real conflict in the decisions. There is no undue extension of responsibility for acts having no apparent tendency to do harm, as might appear upon a cur-

[51] It is the standard set in Scott *v.* Hunter; Fairbanks *v.* Kerr; Grew *v.* Stone; Hoag *v.* R. R., etc., *supra*—the test universally applied for deciding the fact of negligence, the standard of care, or the extent of the duty.

sory reading of *Hogsett* v. *Bunting,* and kindred cases; nor is there any unjust restriction of recovery for injuries to the expectation of the wrongdoer, as the rule in *Hoag* v. *R. R.,* as broadly stated, would seem to indicate, unless properly understood as decisive only where the existence of negligence is in question.

The only criticism of the cases is that while the final result has been in accord with authority and justice, it has been reached not by boldly announcing the two tests probable and natural consequences as governing the decision of the respective questions of negligence and liability therefor, but by modifying a rule proper for the one in order to make a sound standard of liability for the other without clearly stating the reasons for the extension. The rule is so modified and changed where the circumstances of the case demand it, but it is nowhere stated that the fact which requires the change is that by these circumstances the negligence has been established, and that only the extent of the liability for it remains to be determined. Such is the case, but it requires careful study to see it. There is too great a danger that this controlling fact may be overlooked and the cases misunderstood and so misquoted as authority.

Too much is left to the analysis of the student or practitioner; there has been too little authoritative classification of the cases by the court.

It only remains to state what is an independent intervening agent, such as has been held to break the causal connection between the wrong and injury.

Certain of the cases examined have indicated certain requisites of such an agency—from them it appears:

1. It must be independent, self-created, not itself a product and result of the wrongful act, as was the opening of the lever in *Hogsett* v. *Bunting.*

2. It must intervene; it must either come into existence, or within the knowledge of the defendant, after the time the alleged negligent act or omission took place; if it existed to the knowledge of the actor, it becomes one of the circumstances of the case in the light of which the care required of him is to be measured, and so may increase his scope of duty, or exact greater precautions.[52]

[52] See Scott *v.* Hunter; Oil City *v.* Robinson.

3. The operation of natural forces does not constitute such agency, unless of exceptional violence, so extraordinary that human prudence would not have foreseen or provided against them; ordinary winds, the usual freshets, even though not known to exist when the act is done, do not break the chain of natural cause and effect: *Haverly* v. *R. R.*[53]

4. It must divert, and not merely hasten, natural effect of the wrong; so where the refuse of a mine was so placed that every freshet would carry it down stream, the fact that an extraordinary flood quickened its descent did not prevent a recovery by one upon whose land the refuse was so thrown, though no doubt more was so cast upon it, and so greater damage done than if it had been gradually carried down, subsiding as it went: *Elder* v. *Lykens Valley*.[54]

So it must be an independent, intervening, unusual force diverting the natural results of the wrong to some new and different end; it may use a condition caused by the wrong, but it utilizes it to bring about some new consequence of its own.

In this again the Pennsylvania courts have often rendered decisions conflicting both *inter se* and with those of other jurisdictions, rather because of their very broad power of drawing plain inferences from undisputed facts than from any deviation from the ordinary rule as to the nature of such agency.

Thus we see, in *Watson* v. *Township*,[55] *it* was *held* as "matter of law" that where the negligence of the township had caused the escape of a horse, which strayed upon a railroad track, the engine which ran it down was an intervening outside agency.

While in *Sneesby* v. *R. R.*,[56] the Court of Queen's Bench *held* that exactly such dangers and injuries were the natural results of causing animals to roam at large out of their owners' control.

And in *R. R.* v. *Trich*[57], a runaway horse, which ran over

[53] 135 Pa. 50.
[54] 157 Pa. 490.
[55] 112 Pa. 574; 116 Pa. 344.
[56] L. R., 9 Q. B. 263.
[57] 117 Pa. 390.

a woman thrown by a street railway company's negligence prone into the street, was *held* to be an independent intervening cause; it is, to say the least, doubtful if this is not an ordinary peril of the position in which the negligence placed her.

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